



Northern Ireland
Assembly

Research and Information Service Bill Paper

Paper 15/22

4 March 2022

NIAR 17-22

Finance & Economics Research Team

Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill

This Bill Paper aims to inform Assembly scrutiny of the Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill, including that undertaken by the Committee for the Economy. The Bill was introduced by Jemma Dolan, Member of the Legislative Assembly. The Paper provides an overview of the Bill's contents and identifies key potential issues for consideration.

This information is provided in support of Assembly duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as legal or professional advice, or as a substitute for it.

Key Points

Zero Hours Contracts in Northern Ireland (NI)

- United Kingdom (UK) official statistics on Zero Hours Contracts (ZHCs) are published quarterly by the Office for National Statistics (ONS), relying on data from the Labour Force Survey (LFS);
- From 2014 to 2021, the prevalence of ZHCs has been consistently lower in NI than in other parts of the UK;
- The most recent available figures (October 2021 to December 2021) show that only 1.2% of working individuals in NI are employed on ZHCs. However, that figure had doubled from 0.6% in 2014;
- The UK average figure for October 2021 to December 2021 is 3.2%; and,
- According to the LFS data, there has not been a significant rise in the prevalence of ZHCs in the UK labour market since 2014.

Background Information

- In 2014, the (then) NI Department for Employment and Learning (DEL) conducted a consultation on ZHCs;
- The DEL consultation did not recommend a ban on ZHCs;
- In 2016, Section 18 of the *Employment Act (Northern Ireland) 2016* provided for an enabling power to be inserted into the Employment Rights (NI) Order 1996, to prevent abuses associated with the use of ZHCs; and,
- In January 2020, the New Decade New Approach (NDNA) stated that the Executive should move to ban ZHCs.

Overview of the Zero Hours Workers Bill (the ZHW Bill)

The ZHW Bill, as introduced:

- Does not explicitly place a ban on ZHCs;
- Seeks to limit the use of ZHCs by introducing a system of banded hours contracts;
- Contains definitions of a zero hours worker (ZHW) and a ZHC;
- Contains provision entitling workers to claim 3 hours pay, if they are called into work by their employer and when to get there, they are not given any work;
- Makes exclusivity clauses in ZHCs unenforceable;
- Retains the power to make regulations, not just in relation to workers and persons who are employees, but to persons in a non-contractual relationship with an employer - for example, for independent contractors;
- Provides that the Labour Relations Agency (LRA) is given a role in promoting conciliation in employment disputes with regard to ZHCs and ZHWs;

- Sets out the right of a worker to be placed in a band of weekly working hours that reflect the actual hours completed over the previous 3 months;
- Once the worker is placed on a band of weekly working hours, they cannot be construed as being on a ZHC; and,
- Gives the Department for the Economy (DfE) the power to make regulations concerning the paperwork that employers must keep on the subject of banded weekly working hours.

ZHW Bill: Key Provisions Detailed

Defining ZHCs:

- Clause 1 of the ZHW Bill, as introduced, presents a statutory definition for a ZHW and a ZHC;
- However, there many different types of zero-hours arrangements;
- Moreover, there is an apparent challenge in reaching consensus when defining ZHCs; and,
- The lack of a robust universally accepted ZHC definition across the UK may be problematic for those seeking to legislate in this regard.

Banded Hours Contracts:

- The ZHW Bill, as introduced, introduces a system of 8 bands of weekly working hours;
- If the worker's hours, as set out in their ZHC, do not reflect the actual hours they are working every week, the worker can request to be placed in a band of weekly working hours which accurately reflects the hours they are working;
- ZHW Bill, as introduced, places an obligation on employers, every 3 months, to monitor weekly hours worked by individuals and to duly inform in writing them whether they are entitled to be placed on a band;
- The band is calculated by reference to the average weekly working hours over the previous 3 months;
- The worker can make the request at any time, and may make requests even after a previous request has been refused if the circumstances have changed;
- Critics of the banded hours system suggest it do not afford employers and workers with the flexibility they need; and,
- Concerns have also been raised that the system of banded hours is not "fit for purpose" in some employment sectors such as retail, tourism and hospitality due to the seasonal nature of this type of work.

Exclusivity Clauses

- Some individuals on ZHCs are prevented from working for another employer, even when their primary employer has no work for them;
- This practice is known as "exclusivity";

- Clause 3 of the ZHW Bill, as introduced, effectively means that the employer cannot demand that the worker does not do any work outside the ZHC, thus banning exclusivity clauses;
- However, clause 14 of the introduced Bill states that if ZHWs are placed on a band, they are no longer defined as a ZHW;
- If so, that may lead to a situation whereby a worker previously protected against exclusivity clauses as a ZHW is now vulnerable to exclusivity clauses being placed upon them by their employer because they are now on a banded hours contract and no longer on a ZHC; and,
- Despite this apparent loophole, representatives of the NI hospitality and retail sectors have cast doubt on the prevalence of exclusivity clauses and expressed an opinion that exclusivity is a non-issue.

Provisions in Other Jurisdictions: A Comparative Perspective

- In Great Britain (GB), the *Small Business, Enterprise and Employment Act 2015* contains provisions banning exclusivity clauses in ZHCs;
- In 2016, the UK Government published: *Good Work: The Taylor review of Modern Working Practices* (the “Taylor Review”);
- The Taylor Review was generally positive about the flexibility provided by ZHCs: however, that Review stated that the flexibility was one-sided in favour of the employer;
- In 2015, the Republic of Ireland (RoI), the Department of Jobs, Enterprise and Innovation commissioned the University of Limerick to undertake research into the prevalence ZHCs;
- The University of Limerick report stated that banded hours could provide more certainty for those on ZHCs, particularly in the retail and hospitality sectors; and,
- In 2018, the Employment (Miscellaneous Provisions) Act 2018 introduced a system of banded hours contracts.

Key Issues for Consideration: Human Rights and Equality

Key documented negative impacts for workers include the following:

- No guaranteed level of regular earnings that provides any certainty over meeting bills or planning for the future;
- The need to respond to calls to attend work, frequently at short notice, disrupts life outside of work and places a particular strain on families and arranging care for dependants; and,
- The need to be available for work when required by the employer hinders the ability of staff to take up other employment.

ZHC and Gender

- According to Northern Ireland Council for Voluntary Action (NICVA), women are around two-thirds more likely than men to be a ZHW;
- The lack of guaranteed work, and related unpredictability of work from week to week (and day to day) can put a strain on families and make it very difficult to arrange childcare or elder care;
- Many parents also lose out on family friendly rights, including the right to request to work flexibility and the return to their substantive job after maternity or paternity leave; and,
- An Equality Commission for NI investigation into the treatment of pregnant workers and mothers in NI workplaces found that respondents working on non-permanent contracts were more vulnerable to job loss during pregnancy, maternity leave or on return to work.

Gender and Race

- A joint report from the Trade Union Congress (TUC) and the equality organisation Race on the Agenda (RotA) highlights that those from black and minority ethnic (BAME) backgrounds in the UK are almost twice as likely to be on ZHCs as white men, and almost one and a half times more likely than white women;
- That Report warned that far from providing greater flexibility, ZHCs were trapping women from BAME backgrounds in low pay and insecure work.

Key Issues for Consideration: Merits and Demerits of ZHCs

- Key merits of ZHCs include flexibility, retained experience and, cost; and,
- Key demerits of ZHCs include uncertainty, fairness and exclusivity.

Anticipated Implementation Costs

- Clauses 7 and 16 of the ZHW Bill, as introduced, make provision for the Labour Relations Agency (LRA) to monitor the compliance of employers, and to play a key role in the resolution of any disputes with regard to ZHCs and banded hours contracts.
- LRA indicate that a staff complement of 1 Deputy Principal, 3 Staff Officers and an administration team may be needed to perform the new duties specified under Clauses 7 and 16; and
- Based on costings from the average salaries for 2020/21, the total cost of a new team dedicated solely to undertake new duties arising from the provisions created under the Bill, if enacted as introduced, equates to around £267,714 per annum; and,
- However, it should be noted that the above figure is purely an illustrative example, based on assumptions made without any detailed costings or impact assessments.

Introduction

The Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill (the ZHW Bill) was introduced to the Assembly as a Private Member's Bill (PMB) by Jemma Dolan, Member Legislative Assembly (MLA) on 15 November 2021. The ZHW Bill, as introduced, introduces a system of banded hours contracts for workers in Northern Ireland (NI), whose employment is on the basis of short-hours, commonly referred to as "Zero Hours Contracts" (ZHCs). Moreover, the Bill seeks both to strengthen employment rights for such working individuals and to prevent abuse of ZHCs.¹

This Bill Paper aims to support the Assembly, including the Committee for the Economy (the Committee), when considering the ZHW Bill, as introduced. To facilitate, Section 1 of the Paper provides context, outlining a statistical profile of ZHCs in NI. Section 2 presents background information and an overview of the ZHW Bill, as introduced, including a brief summary of its key provisions. Section 3 analyses key provisions in greater detail; followed by Section 4's summary of comparative legislation from other jurisdictions.

Thereafter, Section 5 highlights issues meriting consideration, including those relating to: human rights and equality; potential parity implications with regard to entitlements for working individuals in Great Britain (GB), including cost considerations. Finally, Section 6 concludes, drawing on findings presented in earlier sections.

The Paper's contents are structured as follows:

- Section 1: ZHCs in NI;
- Section 2: Background and Overview of the ZHW Bill;
- Section 3: ZHW Bill: Key Provisions Detailed;
- Section 4: A Comparative Perspective;
- Section 5: Key Issues for Consideration; and,
- Section 6: Concluding Remarks.

Throughout, potential scrutiny points are noted in blue boxes to support MLAs consideration of the Bill as introduced in their plenary and committee capacities.

¹ Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill. (2021) Explanatory and Financial Memorandum: <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/employment-zero-hours-workers-and-banded-weekly-working-hours-bill/efm---as-introduced/>

1 ZHCs in NI

By way of contextualising subsequent sections, this section presents a statistical profile, highlighting the prevalence of ZHCs in the UK and NI.

1.1 Note on ZHCs and UK Official Statistics

UK Official statistics on ZHCs are available from the Office for National Statistics (ONS) *Labour Force Survey* (LFS),² and published quarterly in: *Dataset EMP17: People in employment on zero hours contracts*.³ The LFS uses the following definition for ZHCs:⁴

Zero hours contract – is where a person is not contracted to work a set number of hours, and is only paid for the number of hours that they actually work.

The ONS describes how the LFS statistics are collected as follows:⁵

As part of the survey the LFS asks people in employment if their main job has flexible working and, if so, to choose from a list of employment patterns those which best describe their situation. Only those people who select "zero-hours contract" as an option will be included in this analysis.

In 2018, an ILO report voiced misgiving with the ONS approach, stating:⁶

..this definition is only provided to respondents if they ask explicitly for clarification of the term. The precise working definition of a zero-hours contract in the LFS is, therefore, deeply unclear as classification is primarily a matter of respondent self-identification. This has caused deep reservations about the quality of the statistical evidence.

The ONS address the issue identified by the ILO as follows:⁷

.. the people identified by the LFS as being on a "zero-hours contract" will be those in employment who are aware that their contract allows for them to be offered no hours. This might exclude some people who select another option, such as on-call working, although they have the opportunity to report a "zero-hours contract" as well.

² The LFS is a study of the employment circumstances of the UK population. It is the largest household study in the UK and provides the official measures of employment and unemployment.

³ ONS (2022) *EMP17: People in employment on zero hours contracts*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>

⁴ <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/zerohourscontracts>

⁵ ONS (2022) *EMP17: People in employment on zero hours contracts*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>

⁶ ILO (2018) *Zero-Hours Work in the United Kingdom*. Page 3 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_624965.pdf

⁷ <https://www.ons.gov.uk/aboutus/transparencyandgovernance/freedomofinformationfoi/zerohourscontracts>

Due to concerns around underestimation, the LFS estimates from 2013 onwards were revised, as explained in the 2018 ILO report, which states:⁸

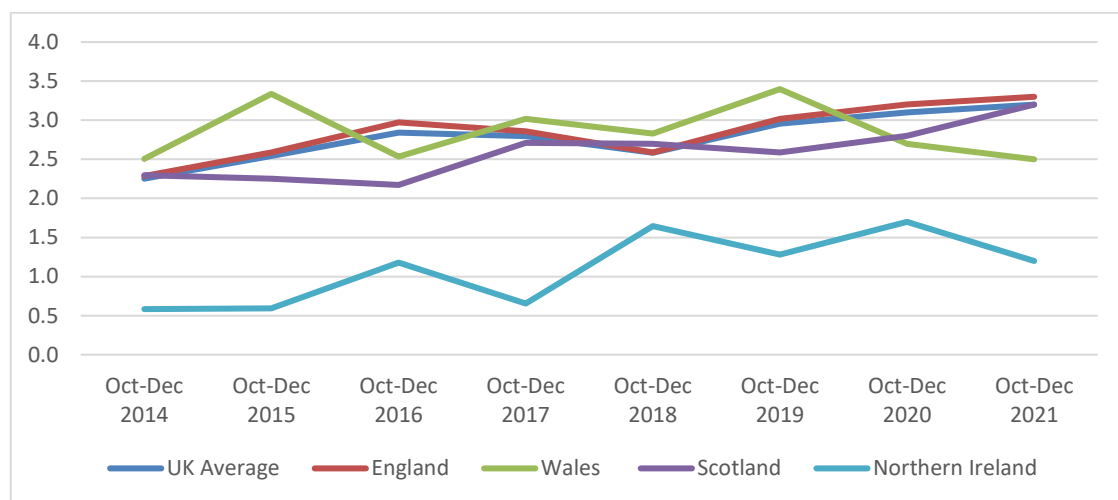
.... the consensus is now that previous LFS methodology resulted in a gross underestimate of the prevalence of zero-hours contracts.

Simply put, official statistics appear less than robust because some of the respondents in the LFS may not be aware of their actual employment status, or indeed what constitutes a ZHC for the purposes of the survey.

1.2 Prevalence of ZHCs in NI

Notwithstanding the above noted issues addressing official statistics collection, Figure 1 below presents the prevalence of ZHCs in the UK labour market by region:

Figure 1: Percentage of individuals in employment on ZHCs by region⁹



Source: ONS 2022

As shown in Figure 1 above, from 2014 to 2021, the prevalence of ZHCs has been consistently lower in NI than that in other parts of the UK. The most recent available figures (October 2021 to December 2021) show that 3.2% of individuals in employment in the UK are employed on ZHCs. For the same period, NI has the lowest prevalence of ZHCs (1.2%), and England has the highest (3.3%). It is perhaps notable that the NI percentage figure equates to 11,000 individuals employed on ZHCs between October and December 2021.

Generally speaking, since 2014, the prevalence of ZHCs in the UK labour market appears to be quite stable. For example, the UK average figure in October to

⁸ ILO (2018) Zero-Hours Work in the United Kingdom. Page 8 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_624965.pdf

⁹ Figure produced by Raise using data from ONS (2022) EMP17: *People in employment on zero hours contracts*. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>

December was 2.3%, rising to 3.2% in 2021. However, in NI the prevalence of ZHCs has doubled from 0.6% to 1.2% over the same period. In numerical terms this represents a rise from 5,000 individuals on ZHCs in 2014 to 11,000 in 2021.

2 Background and Overview of the ZHW Bill

This section provides background information on the ZHW Bill, as introduced, and a brief summary of key Bill provisions.

2.1 Background Information

In 2014, the (then) NI Department for Employment and Learning (DEL) conducted a consultation on ZHCs.¹⁰ The consultation did not recommend an outright ban. A DEL official in oral evidence to the then Committee for Employment and Learning (CEL) explained the reason for this as follows:¹¹

An outright ban on zero-hours contracts would have a disproportionate impact upon flexibility within the economy, and potentially remove some employment opportunities.

In 2016, Section 18 of the *Employment Act (Northern Ireland) 2016* provided for an enabling power to be inserted into the Employment Rights (NI) Order 1996 in relation to ZHCs. The Explanatory Notes accompanying the 2016 Act state:¹²

Section 18 inserts new Article 59A into the Employment Rights (Northern Ireland) Order 1996. The inserted Article empowers the Department to make appropriate provision to prevent abuses associated with the use of zero hours contracts, non-contractual zero hours arrangements or worker's contracts of a kind to be specified in regulations.

On 27 July 2020, the Assembly's Research and Information Service (RalSe) received the following response for the Department for the Economy (DfE), with regard to ZHCs and Section 18 of the *Employment Act (Northern Ireland) 2016*:¹³

In terms of Section 18, this section provides for an enabling power to be inserted into the Employment Rights (NI) Order 1996. This enabling power would permit the Department to make regulations containing such provisions as it considers appropriate for the purposes of preventing abuses arising out of, or in connection with, the use of the zero hours contracts, non-contractual zero hours contracts arrangements or workers'

¹⁰ Department for Employment and Learning (2014) *Zero Hours Contracts: A Public Consultation*: <https://www.economy-ni.gov.uk/sites/default/files/consultations/del/zero-hours-contracts-public-consultation.pdf>

¹¹ Official Report: Minutes of Evidence. Committee for Employment and Learning, meeting on Wednesday, 18 February 2015: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=11375&evidID=6781>

¹² Employment Act (Northern Ireland) 2016: <https://www.legislation.gov.uk/ni/2016/15/notes/division/4/7/1>

¹³ E-mail response from DfE received by RalSe 27 July 2020.

contracts of a kind specified by the regulations. This section was introduced at the Further Consideration stage of the Employment Bill process.

In the absence of Ministers, from January 2017 to January 2020, it was not possible to progress further work on the matter of zero hours contracts.

Minister Dodds has asked officials to develop policy proposals in relation to zero hours contracts. She is mindful of the references to zero hours contracts in the New Decade New Approach document, but recognises that the issue is a complex one. The Covid-19 pandemic has been extremely challenging for workers, businesses and the economy as a whole. The Minister therefore wishes to consider a wide range of options for greater regulation of zero hours contracts to ensure that there is a balance between the needs of workers and businesses. In developing these proposals, the Minister wishes to take account of the views of all stakeholders. Any proposals to regulate the use of zero hours contracts will be subject to public consultation prior to the introduction of any necessary legislation in the Assembly.

It appears that regulating against abuses in ZHCs is currently under consideration by the DfE.

New Decade New Approach

Previously, in January 2020, the New Decade New Approach (NDNA) political agreement stated:¹⁴

...the Executive should move to ban zero hours contracts.

In July 2020, the House of Commons Northern Ireland Affairs Committee (NIAC) published a report of its inquiry into NDNA. There was no mention of ZHCs in that report, or in any published oral or written submission to the NIAC in that regard.

Also, in July 2020, the first meeting of NDNA Joint Board took place. The Joint Board consists of the NI Secretary of State and the NI First and Deputy First Ministers. A press release accompanying this first meeting stated that the Joint Board will:¹⁵

- *Support the Northern Ireland Executive in ensuring sound and stable governance that delivers for the people of Northern Ireland;*
- *Review funding provided by the UK Government to meet commitments set out in the NDNA agreement;*

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

¹⁵ Northern Ireland Office (2020) <https://www.gov.uk/government/news/first-meeting-of-new-decade-new-approach-joint-board>

- *Support transformation in health, education and justice through the NDNA funding package; and,*
- *Consider the effectiveness of infrastructure delivery, drawing on expertise from the Infrastructure and Projects Authority as appropriate.*

The press release also stated:¹⁶

In its first meeting, all participants reaffirmed their commitment to the NDNA agreement and to ensure that commitments set out in the agreement were delivered as a priority.

In February 2022, UK Minister of State for the Northern Ireland Office (NIO) stated in an oral evidence session to the NIAC that the NDNA Joint Board had met in July 2020, October 2020 and March 2021. There was no mention of ZHCs during that oral session.

Finally, with regard to NDNA, it is notable that the ZHW Bill, as introduced, does not explicitly place a ban on ZHCs. Rather, it seeks to limit the use of ZHCs, as the following statement from a MLA during an evidence session on the Bill testifies:¹⁷

I am instinctively supportive of the Bill because — the point has been well made — it does not ban zero-hours contracts but tries to ban employers from imposing zero-hours contracts.

This view was subsequently reiterated by a representative of the Northern Ireland Committee - Irish Congress of Trade Unions (NIC-ICTU), which stated: ¹⁸

Although the Bill is not a ban on zero-hours contracts, which the New Decade, New Approach agreement had promised, NIC-ICTU fully supports it.

¹⁶ Ibid.

¹⁷ Committee for the Economy. (Hansard 16 Feb. 2022) *Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill*: <http://data.niassembly.gov.uk/HansardXml/committee-30643.pdf>

¹⁸ Ibid.

2.2 Overview of the ZHW Bill

The ZHW Bill, as introduced, consists of 3 parts. Part 1 (clauses 1- 7) contains provisions with regard to ZHCs and ZHWs. Part 2 (clauses 8-16) contains provisions with regard to introducing a system of banded hours. Part 3 (clauses 17-19) contains general provisions relating to interpretation and commencement. A summary of the key provisions of the ZHW Bill, as introduced, is presented in Table 1 below:

Table 1: ZHW Bill: Summary of Key Clauses¹⁹

Key Provision	EFM Commentary on Clauses
Clause 1 ZHWs	<i>Defines a zero hours worker as someone on a zero hours contract. A zero hours contract is defined as a contract where there is no guarantee that the worker will be given any work. Clause 1 covers employees and workers, but not a person on a non-contractual arrangement. In practice, this means that these provisions apply to workers, but not to someone classified as self-employed, or an independent contractor. Clause 1 also repeals section 18 of the Employment Act (Northern Ireland) 2016. That section created a regulation making power in respect of zero hours workers, but that section has never been brought into force. The power to make regulations has been replicated in clause 4.</i>
Clause 2 ZHWs called in but not given work	<i>Covers the situation where a zero hours worker is called in to work, but when they get there, they are not actually given any work (or given less than 1 hour's work). Every time this happens, the worker is entitled to be paid as if they had worked for 3 hours. There is an exception. There is no entitlement to payment if there are exceptional circumstances (for example an emergency or accident, or the worker is ill) meaning that the worker wouldn't be expected to do the work. This entitlement to be paid if called in but not given sufficient work is treated in the same way as the entitlement to wages – this allows the worker to complain about it in the same way as they could complain if they weren't given their full wages.</i>
Clause 3 Exclusivity terms unenforceable	<i>Makes exclusivity terms unenforceable. This means that a term in a zero hours contract which seeks to prevent the zero hours worker from taking on other work is not enforceable against that worker. The employer cannot demand that the worker does not do any work outside the zero hours contract.</i>
Clause 4 Power to make further provision in respect of zero hours workers	<i>Replicates the existing power to make regulations setting out more laws for zero hours contracts. This clause retains the power to make regulations, not just in relation to workers and persons who are employees, but to persons in a non-contractual relationship with an employer, for example for independent contractors. The power to make these regulations has a limited version of what is called a Henry VIII clause. This means that regulations made under this clause can amend primary legislation. There are a number of safeguards in place. Firstly, regulations can only amend legislation which has been enacted before this clause comes into force, not legislation enacted after it. Secondly, those</i>

¹⁹ Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill. Explanatory and financial memorandum: <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/employment-zero-hours-workers-and-banded-weekly-working-hours-bill/efm---as-introduced/>

	<i>regulations must be laid in draft form before the Assembly, and approved by the Assembly, before they can be made. Thirdly, before making those regulations, the Department must consult widely.</i>
Clause 5 Right not to be subjected to detriment	<i>Part 6 of the 1996 Order gives protection for workers and employees if they exercise particular rights, or in connection with particular things. Clause 5 adds to that list by stating that workers cannot be penalised (i.e. cannot be subjected to detriment) if they breach an unenforceable exclusivity clause of the sort referred to in clause 3. Clause 5(2) gives the worker a right to bring a claim to an industrial tribunal if this right is breached. This doesn't apply if the worker is dismissed as unfair dismissal is dealt with in clause 6.</i>
Clause 6 Unfair Dismissal	<i>All employees have the right not to be unfairly dismissed, as set out in Part 11 of the 1996 Order. That Order goes on to state that if the dismissal is for certain reasons, it will be automatically unfair. Clause 6 adds to this list and states that if an employee is dismissed because they breached an unenforceable exclusivity term that will automatically constitute an unfair dismissal. Normally, there is a minimum qualifying period of employment before an employee can take advantage of the unfair dismissal protections. Clause 6(2) changes this and adds unfair dismissal for breach of an exclusivity term to the list of dismissals where there is no minimum qualifying period of employment. Clause 6(3) provides that this protection applies to workers as well as employees.</i>
Clause 7 Role of the LRA	<i>The Labour Relations Agency already has a role in promoting conciliation in a list of employment disputes. This clause adds complaints about zero hours contracts to that list.</i>
Clause 8 Entitlement to Banded Hours	<i>Sets out the right of a worker to be placed in a band of weekly working hours. If the worker's hours, as set out in their contract, do not reflect the actual hours they are working every week, the worker can request to be placed in a band of weekly working hours which accurately reflects the hours they are doing. Once placed in that band, the worker must then be given working hours, each week, which fall within that band.</i>
Clause 9 Employer's obligation to inform worker of entitlement to banded weekly working hours	<i>Places an obligation on the employer to keep under review whether a worker is entitled to be placed in a band of weekly working hours.</i>
Clause 10 Procedure for placement in banded weekly working hours	<i>Sets out the procedure for a worker to be placed in a band of weekly working hours. After the worker makes the request, the employer has 4 weeks to comply. The band is calculated by reference to the average weekly working hours over the previous 3 months. The worker can make the request at any time, and may make requests even after a previous request has been refused if the circumstances have changed.</i>
Clause 11 Exceptions	<i>Sets out the exceptions where a worker isn't entitled to be placed in a band. This includes where there is insufficient evidence to justify being placed in a band, or because the weekly hours have been in flux for some reason.</i>
Clause 12 Complaints to industrial tribunals	<i>Gives workers the right to bring a claim in the industrial tribunals around the failure of an employer to place them in a band of weekly working hours. The standard 3-month time limit to bring a claim in the industrial tribunals applies.</i>

<p>Clause 13 Remedies</p>	<p><i>Grants the industrial tribunals the power to require an employer to place a worker in a band of weekly working hours where it finds that the employer has broken the banded hours obligation.</i></p>
<p>Clause 14 Application to zero hours workers</p>	<p><i>If a zero hours worker is placed in a band of weekly working hours, they cannot then be construed as being on a zero hours contract. This clause confirms that.</i></p>
<p>Clause 15 Power to require records to be kept</p>	<p><i>Gives the Department (for the Economy) the power to make regulations concerning the paperwork that employers must keep on the subject of banded weekly working hours.</i></p>

Source: ZHW Bill and EFM 2021

3 ZHW Bill: Key Provisions Detailed

This section presents the key provisions of the ZHW Bill, as introduced, in further detail. Specifically, it examines Bill provisions with regard to the following:

- Defining ZHCs;
- Banded Hours; and,
- Exclusivity clauses.

3.1 Defining ZHCs

Clause 1 of the ZHW Bill, as introduced, presents a statutory definition for a ZHW and a ZHC. It states:

“zero hours worker” means a worker who has entered into or works under a zero hours contract,

“zero hours contract” means a contract of employment or other worker’s contract under which—

(a) the undertaking to do or perform work is an undertaking to do so conditionally on the employer making work available to the worker;
and

(b) there is no certainty that any such work will be made available to the worker.

However, there is an apparent challenge in reaching consensus when defining ZHCs. That is illustrated by the variety of definitions – legislative and non-legislative - including those relating to the collection of UK official statistics – as presented in the following paragraphs.

In 2014, the then Department for Employment and Learning (DEL) stated:²⁰

There is no legal definition of a zero hours contract in either Northern Ireland or Great Britain employment law. In general terms a zero hours contract is an employment contract in which the employer does not guarantee the individual any work and the individual is not obliged to accept any work offered.

²⁰ Department for Employment and Learning (2014) Zero Hours Contracts: A Public Consultation: <https://www.economy-ni.gov.uk/sites/default/files/consultations/del/zero-hours-contracts-public-consultation.pdf>

In 2015, the Small Business, Enterprise and Employment Act 2015 came into force in Great Britain (GB). Section 153 of this Act amended Section 27 of the Employment Rights Act 1996 (the 1996 Act) to include the following definition of ZHCs.

Section 27(1) of the 1996 Act defines “ZHC” as:²¹

...a contract of employment or other worker’s contract under which— (a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and (b) there is no certainty that any such work or services will be made available to the worker.

This definition was introduced to facilitate the banning of “exclusivity clauses” in ZHCs, as discussed below at sub-section 3.3 of this Paper. There has been some criticism regarding its narrow application, as noted in the 2020 House of Commons Library paper, which stated:²²

...academic commentary draws attention to the fact that there are actually many different types of zero-hours arrangements. For example, [...] drew a distinction between ‘zero-hours contracts’, where the worker is obliged to accept any work offered, and ‘casual work contracts’, where the worker can refuse to accept work. [...] concluded that “the supposed category of Zero-Hours Contracts is a deeply uncertain and therefore unsatisfactory one” and that as “a matter of legal analysis, it is conceptually uncertain what kinds of personal work arrangement should or even can be regarded as ZHCs.

It is noteworthy that in 2016, twenty years following the 1996 Act, that Section 18 of the *Employment Act (Northern Ireland) 2016* included a definition of “ZHC” and “non-contractual zero hours arrangement”. That 2016 provision states:²³

“Zero Hours Contract” means a contract of employment or other worker’s contract under which –

(a) the undertaking to do or perform work is an undertaking to do so conditionally on the employer making work available to the worker; and

(b) there is no certainty that any such work will be made available to the worker.

It is also noteworthy that **Clause 1(2)** of the ZHW Bill, as introduced, requires Section 18 of the *Employment Act (Northern Ireland) 2016* to be repealed.

²¹ Employment Rights Act 1996 (Section 27(1): <https://www.legislation.gov.uk/ukpga/1996/18/section/27A>)

²² House of Commons Library (2020) *Insecure work: The Taylor Review and the Good Work Plan*. (Page 53). <https://researchbriefings.files.parliament.uk/documents/CBP-8817/CBP-8817.pdf>

²³ Employment Act (Northern Ireland) 2016: <https://www.legislation.gov.uk/niu/2016/15/section/18>

Outside NI, in 2018, two years following the enactment of the above NI legislative provision, the International Labour Organisation (ILO) stated:²⁴

... despite widespread assumptions to the contrary, there is no such thing as 'the' zero-hours contract (ZHC). It is important to see zero-hours work as a wide spectrum of contractual arrangements, centred on the absence of guaranteed hours for the worker.

In 2020, when discussing the term's use in GB, the House of Commons Library stated:²⁵

The term ZHC is most often used colloquially to describe an employment arrangement where there are no guaranteed hours. Under some contracts, workers may be required to accept any work offered by their employer, whereas in others, they may choose to turn down the work.

With regard to the specified definition issues discussed above, potential scrutiny points arise as follows:

1. The apparent lack of clarity and consensus in reaching a standardised definition of ZHCs presents challenges for policy makers.
2. The lack of a robust universally accepted ZHC definition across the UK may be problematic for those seeking to legislate in this regard.
3. Is the Committee for the Economy content with the current definitions contained in the ZHW Bill as introduced?
4. Are the definitions too broad or too narrow?

²⁴ International Labour Office (2018) Zero-Hours Work in the United Kingdom: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_624965.pdf

²⁵ House of Commons Library (2020) Library Briefing. Zero Hours Contracts: <https://researchbriefings.files.parliament.uk/documents/SN06553/SN06553.pdf>

3.2 Banded Hours

The Bill Sponsor describes the banded hours system as follows:²⁶

...banded-hour contracts will mean that workers on lower-hour contracts will have a statutory entitlement to a banded-hour contract, if the number of hours that they have actually worked in the previous three months does not reflect their contracted hours. The banded-hour contract will provide workers with a minimum and a maximum number of weekly contracted hours.

Clause 8 of the ZHW Bill, as introduced, provides for a worker to be placed in a band of weekly working hours. If enacted as introduced, it would amend Part IXB of the 1996 Order by inserting the following:

112J.—(1) A worker is entitled to be placed in a band of weekly working hours set out in the table if the condition set out in paragraph (2) is met.

Table 2 below sets out the proposed banded hours under clause 8 of the ZHW Bill, as introduced:

Table 2: Proposed bands of weekly working hours²⁷

Band	From	(Up to but not including)
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours and over	

Source: ZHW Bill (Clause 8)

Furthermore, **Clause 8** continues

(2) That condition is that the worker's weekly hours, as set out in their contract, does not reflect the number of hours worked per week during the reference period. (3) Where a worker is placed in a band, then each week the worker must be given a number of hours of work that fall within that band

Simply put, if the workers' hours, as set out in their contracts, do not reflect the actual hours they are working every week, the workers can request to be placed in a band of

²⁶Committee for the Economy. (Hansard 8 Dec. 2021) Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill [committee-29493.pdf \(niassembly.gov.uk\)](#)

²⁷ Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill

weekly working hours that accurately reflect the hours they are doing.²⁸ Once placed in that band, the workers must then be given working hours, each week, which fall within the given band.

The noted reference period is prescribed under clause 8(5), as follows:²⁹

(5) In this Part “reference period” means the period of three months after the commencement of the worker’s contract with the employer and immediately before the worker makes a request in accordance with Article 112K.

The duration of the reference qualifying period has been the subject of some debate during the current passage of the ZHW Bill, for example a MLA stated:³⁰

when we look at the qualifying period of three months, what is to stop an employer who takes a more cavalier approach from, for example, simply not issuing a contract in the first place and offering only very casual employment, or from using someone for two or two and a half months and then making sure that that person does not work after that period and therefore does not reach the qualifying period?

Another Member during the same debate stated:³¹

...a worker has to work for three months consecutively in order to qualify for a banded-hours contract. What if, as an employer, I decide to employ Ms [...] for two months, then Mr [...] for the next two months, back to Ms [...] for the third two months and then back to Mr [...] for the fourth two months? Is that not something that, because it is a potential legal abuse of the system, we need to consider?

Clause 9 of the ZHW Bill, as introduced, places an obligation on employers – i.e. every 3 months monitor weekly hours worked by individuals and duly inform them, in writing, whether they are entitled to be placed on a band.

Clause 10 sets out the procedure for placing workers on banded working hours. After the worker makes the request, the employer has 4 weeks to comply. The band is calculated by reference to the average weekly working hours over the previous 3 months. The worker can make the request at any time, and may make requests, even after a previous request has been refused if the circumstances have changed.³²

²⁸ Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill. Explanatory and financial memorandum: <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/employment-zero-hours-workers-and-banded-weekly-working-hours-bill/efm---as-introduced/>

²⁹ Ibid.

³⁰ <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2022/01/31&docID=365157#3883768>

³¹ Ibid.

³² Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill. Explanatory and financial memorandum: <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/employment-zero-hours-workers-and-banded-weekly-working-hours-bill/efm---as-introduced/>

Criticisms of banded hours

One of the most commonly cited merits of ZHCs is the flexibility that they provide for employers and workers. (See subsection 5.2 below for an examination of the merits and demerits of ZHCs.) Consequently, criticism has been levelled at the banded hours provisions contained in the ZHW Bill, as introduced, in that they effectively limit the flexibility that ZHCs offer to employers and workers. For example, during the second stage debate of the ZHW Bill, a MLA stated:³³

In moving to banded provisions that are based purely on the last three months of work, there is a danger that we will create a level of rigidity that is not to anyone's benefit.

This view was echoed by another MLA in the same debate, i.e.:³⁴

We liaised with Hospitality Ulster earlier today, and it was clear that, while it is very supportive of any legislation that will tackle abuse, it has concerns that outlawing zero-hours contracts will remove a lot of flexibility, particularly for small businesses and for those who wish to choose when they work.

Concerns have also been raised that the system of banded hours is not “fit for purpose” in some employment sectors, such as retail, tourism and hospitality, due to the seasonal nature of that type of work. This view was put forward by a representative of Hospitality Ulster in a Committee for the Economy evidence session on the ZHW Bill. That Committee Member stated:³⁵

However, as the industry is now seasonal and there are no guaranteed levels of work, as functions or events may not happen, there would probably be a concern about having staff on the books with banded-hours contracts and having no real work for them to do.

It is also noteworthy that the decision to request a banded hours contract is optional for the worker. Individuals may choose to remain on a ZHC, if it suits their particular needs; or opt for a banded hours contract, if they require more certainty with regard to a more regular working pattern. The Bill Sponsor reiterated this point during the Bill's second stage debate, stating:³⁶

The Bill's purpose is to provide workers with the option of being on a banded-hours contract or to stay on a zero-hours contract. It is not forcing

³³ <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2022/01/31&docID=365157#3883768>

³⁴ Ibid.

³⁵ Committee for the Economy. (Hansard 16 Feb.2022) Employment (Zero Hours Workers and Banded Weekly Working Hours): <http://data.niassembly.gov.uk/HansardXml/committee-30643.pdf>

³⁶ <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2022/01/31&docID=365157#3883768>

them. The option is there, and if, after three months, the offer is made and they still do not want it, that is their prerogative.

With regard to banded hours, potential scrutiny points arise as follows:

5. If clause 8 (5) is enacted as introduced, is there a danger that the 3-month reference/qualifying period could be misused by unscrupulous employers, intent on rotating staff constantly; thereby denying workers access to a banded hours contract?
6. If so, how could that be mitigated?
7. What are the potential positive or negative impacts on employers and workers following the introduction of a banded hours system?
8. What is the Committee for the Economy's view on the system of banded hours with regard to limiting flexibility for employers and workers currently on ZHCs?
9. Are any potential negative impacts for the employer outweighed by the protection banded hours affords the worker?
10. Does the Committee for the Economy view the system on banded hours to be detrimental to employers and workers in the retail, tourism and hospitality sectors?
11. If so, what amendments to the ZHW Bill, as introduced, would rectify this?

3.3 Exclusivity Clauses

Some individuals on ZHCs are prevented from working for another employer, even when their primary employer has no work for them. This practice is known as "exclusivity". In 2013, the then UK Department for Business Innovation & Skills (BIS) highlighted concerns over exclusivity, stating:³⁷

In certain cases [exclusivity] can mean that people were stopped from looking for work elsewhere particularly when they needed more hours to bump up their earnings. Feedback from employers themselves suggests awareness that there can be abuses that limit flexibility.

In GB, under the *Small Business, Enterprise and Employment Act 2015*, exclusivity clauses in ZHCs are unenforceable; and so effectively banned. Additionally, since January 2016, a worker - who was engaged on a ZHC and subsequently was

³⁷ Department for Business Innovation & Skills (2013) Consultation :Zero Hours Employment Contracts: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/267634/bis-13-1275-zero-hours-employment-contracts-FINAL.pdf

dismissed or subjected to a detriment for breaching an exclusivity clause - can complain to an employment tribunal. Such a scenario amounts to automatic dismissal.

There is currently no similar regulation of exclusivity clauses in ZHCs in NI. However, clause 3 of the ZHW Bill, as introduced, introduces such provision. It states:

3. After Article 59B of the 1996 Order (as inserted by section 2) insert—

“Exclusivity terms unenforceable

59C.—(1) Any provision of a zero hours contract which—

(a) prohibits the zero hours worker from doing work or performing services under another contract or under any other arrangement, or

(b) prohibits the zero hours worker from doing so without the employer’s consent, is unenforceable against the zero hours worker.

Clause 3 of the ZHW Bill, as introduced, effectively means that the employer cannot demand that the worker does not do any work outside the ZHC. However, clause 14 of the ZHW Bill states:

If a zero hours worker (within the meaning of Part IVA) is placed in a band of weekly working hours in accordance with this Part, that person ceases to be a zero hours worker.

Simply put, if workers are placed in a band of weekly working hours, they cannot then be construed as being on a ZHC. However, that may lead to a situation whereby workers who previously were protected against exclusivity clauses, due to being employed on a ZHC, are now vulnerable to an exclusivity clause being placed upon them by an employer because they are no longer viewed as working under a ZHC. This apparent loophole was further explained by a representative of NIC-TUC during an evidence session on the ZHW Bill. He explained:³⁸

.. Clause 14 states that if zero-hours contract workers are placed on a band, they are no longer defined as zero-hours workers. However, if that is the case, according to the Bill, they will no longer be protected from the ban on exclusivity clauses or compensated for being called into work and not being given any hours. If that remains the case, you could have a worker placed on a band, conceivably the lowest band, 3 to 6 hours, called into work on a particular day and then denied hours when they arrive, while those who chose to remain on zero-hours contracts are given work. This could be used by bad employers to penalise workers who seek to access the protections of the Bill.

³⁸ Committee for the Economy. (Hansard 16 Feb.2022) Employment (Zero Hours Workers and Banded Weekly Working Hours): <http://data.niassembly.gov.uk/HansardXml/committee-30643.pdf>

Despite this apparent loophole, representatives of the NI hospitality and retail sectors have cast doubt on the prevalence of exclusivity clauses and expressed an opinion that exclusivity is a non-issue:³⁹

I do not think that exclusivity clauses are widespread. Again, unfortunately, I do not have the statistics. I would be interested to find out how many zero-hours workers in hospitality — again, they make up a fraction of the hospitality workforce — have exclusivity clauses.

And:

Given the low level of zero-hours contracts among our membership, the exclusivity thing does not apply. Some of the workers have enough challenges doing one part-time job, never mind if they were to have a multitude of others. It really does not apply.

With regard to exclusivity clauses, potential scrutiny points arise as follows:

12. Does the Committee for the Economy agree that Clause 14, as introduced, creates a loophole that unscrupulous employers could exploit?

13. If so, what amendments could the Committee for the Economy bring forward to rectify this?

14. What is the Committee for the Economy's opinion on the assertion that there is a low level of exclusivity clauses currently in operation in NI ZHCs in the retail and hospitality sectors?

³⁹ <http://data.niassembly.gov.uk/HansardXml/committee-30542.pdf>

4 A Comparative Perspective

This section summarises key policy interventions and regulation in GB and RoI, which have been introduced and implemented in each jurisdiction, to protect workers against abuses or misuses of ZHCs by employers.

4.1 GB

In 2013, the UK Coalition Government initiated a consultation on the use of ZHCs in GB.⁴⁰ The consultation was launched on 19 December 2013 and ran until 13 March 2014. The findings of the consultation were particularly critical of the use of exclusivity clauses in ZHCs. As a consequence, the Government announced its intention to ban these practises. And, as mentioned above, in 2015, it introduced the *Small Business, Enterprise and Employment Act 2015*,⁴¹ which amended Section 27 of the *Employment Rights Act 1996*,⁴² and effectively banned the use of exclusivity clauses in ZHCs in GB.

Section 27A(2) of the 1996 Act, as amended, states:⁴³

Any provision of a zero hours contract which— (a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or (b) prohibits the worker from doing so without the employer’s consent, is unenforceable against the worker.

In 2020, the House of Commons Library highlighted criticism of these provisions, stating:⁴⁴

Commentators highlighted that the contractual unenforceability of the clause would be meaningless vis-à-vis the worker if the employer was nonetheless free to refrain from providing future work should the worker ignore an exclusivity requirement.

However, the *Small Business, Enterprise and Employment Act 2015* also created a power enabling a Minister to make regulations that would penalise employers who use exclusivity clauses. The *Exclusivity Terms in ZHCs (Redress) Regulations 2015*⁴⁵ created rights for:

- Zero-hours workers classed as “employees” not to be unfairly dismissed for failing to comply with an exclusivity requirement; and,

⁴⁰ Department of Business & Innovation (2013) *Consultation: Zero hours employment contracts*: http://web.archive.org/web/20141007085627/https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267634/bis-13-1275-zero-hours-employment-contracts-FINAL.pdf

⁴¹ Small Business, Enterprise and Employment Act 2015: <https://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

⁴² Employment Rights Act 1996: <https://www.legislation.gov.uk/ukpga/1996/18/contents>

⁴³ Ibid.

⁴⁴ House of Commons Library (2020) *Zero Hours Contracts*: <file:///C:/Users/Owner/Downloads/SN06553.pdf>

⁴⁵ Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015: <https://www.legislation.gov.uk/uksi/2015/2021/contents/made>

- Zero-hours workers classed as “workers” not to be subjected to any detriment for failing to comply with an exclusivity requirement.

The House of Commons Library explains the enforceability of these rights in its paper, as follows:⁴⁶

The rights are enforceable against an employer by way of a claim to an employment tribunal. Where a tribunal considers a claim to be well founded, it may make a declaration to that effect and award compensation, subject to the same limit as that applicable in unfair dismissal claims.

Taylor Review

In 2016, the UK Government commissioned a report to assess the implications for employment regulation of new forms of work, driven by digital platforms. The subsequent report, *Good Work: The Taylor review of Modern Working Practices* (the “Taylor Review”) included comments in relation to ZHCs. The Taylor Review was generally positive about the flexibility provided by ZHCs, stating:⁴⁷

Flexibility has been a key part of enabling business to respond to changing market conditions and has supported record employment rates. Individuals have the opportunity to work in a range of different ways, on hours that fit around other responsibilities, such as studies or caring responsibilities. The Labour Force Survey published in March 2017 found that almost one fifth of people on zero hours contracts are in full-time education, and 68% of those on zero hours contracts do not want more hours.

However, the report stated that the flexibility offered by ZHCs was one-sided in favour of the employer, stating:⁴⁸

There is an issue of flexibility not being reciprocated, with a requirement to be available for work at very short notice, without any guarantee that work will actually be available. This makes it very difficult for a person to manage their financial obligations, or for example secure a mortgage.

The Taylor Review recommended that in order to redress the balance of one-sided flexibility, the UK Government should consult the Low Pay Commission (LPC) on a proposal allowing non-guaranteed hours to attract a higher rate of National Minimum Wage. The Government did consult the LPC. However, at the time of writing this Paper, the Government has no plans to legislate in this regard.

⁴⁶ House of Commons Library (2020) Zero Hours Contracts. Page 21:

<https://researchbriefings.files.parliament.uk/documents/SN06553/SN06553.pdf>

⁴⁷ Taylor, Matthew et al. (2017) *Good Work: the Taylor Review of Modern Working Practices*: Page 43

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

⁴⁸ Ibid.

4.2 Rol

In 2015, the Rol, Department of Jobs, Enterprise and Innovation commissioned the University of Limerick to undertake research into the prevalence ZHCs in Rol. The key objectives of the research were as follows:⁴⁹

- To fill the gap that currently exists in terms of available hard data and information concerning the prevalence of ZHCs in the Irish economy and the manner of their use;
- To assess the impact of ZHCs on employees; and,
- To enable the Minister to make any evidence-based policy recommendations to Government considered necessary on foot of the study.

The subsequent report included a recommendation to introduce a system of banded hours to limit abuses of ZHCs by employers. The report stated that banded hours could provide more certainty for those on ZHCs, particularly in the retail and hospitality sectors. It described the system of banded hours as follows:⁵⁰

Banded hours place each employee within a set guaranteed 'band' of hours e.g., 15-19 hours. A periodic review takes places on an annual basis and if any employee continuously works above the band they are in, they are automatically lifted into the next band (i.e., the higher number of hours that they have actually been working now becomes their new guaranteed band).

Recommendation 9 of the report stated:⁵¹

When negotiating at sectoral level, we recommend that employer organisations and trade unions examine examples of good practice which can provide flexibility for employers and more stable working conditions for employees, such as annualised hours and banded hours agreements.

This recommendation was ultimately taken on-board by the Rol Government and a system of banded hours contracts was introduced by provisions in the Employment (Miscellaneous Provisions) Bill 2017 and the *Employment (Miscellaneous Provisions) Act 2018 (the 2018 Act)*.

⁴⁹ University of Limerick (2015) *A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees*: <https://dbei.gov.ie/en/Publications/Publication-files/Study-on-the-Prevalence-of-Zero-Hours-Contracts.pdf>

⁵⁰ Ibid. Page 64.

⁵¹ Ibid. Page 126.

Employment (Miscellaneous Provisions) Bill 2017

The Explanatory Memorandum of the Employment (Miscellaneous Provisions) Bill 2017 (the 2017 Bill), which would in turn become the 2018 Act, described the purposes of the 2017 Bill as follows:⁵²

...to: (a) Ensure that employees are better informed about the nature of their employment arrangements and, in particular, their core terms at an early stage of their employment – a new offence is being created for non-provision of core terms within a specified period.

*(b) **Prohibit zero hours contracts in most circumstances.***

(c) Strengthen the provisions around minimum payments to low-paid employees who may be called in to work for a period but not provided with that work – an enhanced minimum payment is being introduced.

*(d) **Introduce a “banded hours” provision** so that employees on low hour contracts who consistently work more hours each week than provided for in their contracts of employment, are entitled to be placed in a band of hours that better reflects the reality of the hours they have worked over a reference period.*

(e) Strengthen the anti-penalisation provisions for employees who invoke a right under the Terms of Employment (Information) Act 1994 and the Organisation of Working Time Act 1997.

The Employment (Miscellaneous Provisions) Act 2018

Section 16 of the 2018 Act amends Section 18 of the *Organisation of Working Time Act, 1997*,⁵³ introducing a ‘banded hours’ system. It states:⁵⁴

The Act of 1997 is amended by the insertion of the following section after section 18:

“18A.(1) Where an employee’s contract of employment or statement of terms of employment does not reflect the number of hours worked per week by an employee over a reference period, the employee shall be entitled to be placed in a band of weekly working hours specified.

⁵² Employment (Miscellaneous Provisions) Bill 2017: <https://www.oireachtas.ie/en/bills/bill/2017/87/?tab=documents>

⁵³ Organisation of Working Time Act, 1997: <http://www.irishstatutebook.ie/eli/1997/act/20/enacted/en/html>

⁵⁴ The Employment (Miscellaneous Provisions) Act 2018: Section 16: <http://www.irishstatutebook.ie/eli/2018/act/38/section/16/enacted/en/html#sec16>

It is perhaps noteworthy that the bands of weekly working hours under the Employment (Miscellaneous Provisions) Act 2018 are equivalent to those specified in **clause 8 of the ZHW Bill, as introduced**.

The band of weekly working hours on which the employee is entitled to be placed shall be determined by the employer on the basis of the average number of hours worked by that employee per week during the reference period. The reference period mentioned above is 12 months.

Individuals must apply in writing to their employer and request to be placed on banded hours contract. The employer will decide which band of weekly hours applies to them, based on the average number of hours that they worked per week during the past 12 months. The employer must place them on a band of weekly hours no later than 4 weeks from the date they made the request. Once they have been placed on banded hours, they are entitled to work an average of those hours for the next 12 months.

Section 18 of the 2018 Act amends the *National Minimum Wage Act 2000*,⁵⁵ to provide protection for employees called into work, but then sent home without work. It states:⁵⁶

...employee shall be remunerated by his or her employer in respect of the employee's working hours in any pay reference period, at an hourly rate of pay that on average is not less than the national minimum hourly rate of pay.

The following extract from the second stage debate on the Bill explains the underlying rationale for this provision:⁵⁷

Employees who are "on call" will continue to be excluded from this minimum payment. The focus here is on low-paid employees. I want to ensure that where low-paid employees are called in to work but sent home again without work, they get a reasonable compensation payment.

For example, if an employer calls an employee into work but then decides they are not needed, that employee would be entitled to three times the minimum wage, which is €28.65, every time that occurs. This is to discourage the unscrupulous practice of calling employees into work and then sending them home without work or more meaningful compensation.

⁵⁵ National Minimum Wage Act 2000: <http://www.irishstatutebook.ie/eli/2000/act/5/enacted/en/html>

⁵⁶ The Employment (Miscellaneous Provisions) Act 2018: Section 18:
<http://www.irishstatutebook.ie/eli/2018/act/38/enacted/en/print#sec18>

⁵⁷ Employment (Miscellaneous Provisions) Bill 2017: Second Stage: <https://www.oireachtas.ie/en/debates/debate/dail/2018-02-14/29/>

Criticisms of Banded Hours Contracts

In February 2018, the Irish Human Rights and Equality Commission (the Commission) published a report presenting key observations of the 2017 Bill. The report listed the following concerns in relation to banded hours arrangements:⁵⁸

- A limitation of banded hours mechanisms;
- The interaction with the social welfare system;
- The identification of a suitable 'reference period' before a worker secures the right proposed;
- Two drafting issues;
- A significant potential adverse effect; and,
- Enforcement.

The Commission report further stated:⁵⁹

The Explanatory Memorandum to the Bill states that the purpose of the new section 18A is to enable a worker to be given hours work that are 'a more accurate reflection of the hours worked'. However, the choice of banded hours as the mechanism to achieve the stated goal has a significant disadvantage. Banded hours can be a threat to the income of a worker. If the number of hours that a worker has been providing are at or near the upper limit of a band and if the relevant band is sufficiently wide, then the number of hours at the lower limit can result in a significant reduction in income.

For example, under the banded hours in the Bill, somebody who works 34 hours per week (Band C) who exercises their right to be given a contract in that band could have their working time reduced to 25 hours per week, which would result in a cut in their pay of 26 percent. In monetary terms, if they are on the national minimum wage, their pay could be cut from €314.50 to €231.25 per week.

⁵⁸ Irish Human Rights and Equality Commission (2018) *Observations on the Employment Miscellaneous Provisions Bill 2017*: <https://www.ihrec.ie/app/uploads/2018/02/Observations-on-the-Employment-Miscellaneous-Provisions-Bill-2017-.pdf> (page 22-28)

⁵⁹ Irish Human Rights and Equality Commission (2018) *Observations on the Employment Miscellaneous Provisions Bill 2017*: <https://www.ihrec.ie/app/uploads/2018/02/Observations-on-the-Employment-Miscellaneous-Provisions-Bill-2017-.pdf>

5 Key Issues for Consideration

This section highlights key issues arising from the introduced Bill that merit consideration in relation to:

- Human Rights and Equality;
- Merits and demerits of ZHCs; and,
- Anticipated Implementation Costs.

Each are explored in turn below.

5.1 Human Rights and Equality

Regarding the potential human rights and equality impact of the Bill introduced in the Assembly, key areas for consideration concern the negative impacts for employees/workers and the disproportionate bearing that has on women, younger workers and ethnic minorities.

5.1. Documented Negative Impacts of ZHCs for Workers

There has been increased scrutiny of ZHCs in recent years. While they are often lauded for their flexibility, there are a number of documented, detrimental impacts for workers. According to Unison, ZHCs present huge drawbacks in comparison to permanent and regular work.⁶⁰ In particular, Unison notes that:⁶¹

- *There is no guaranteed level of regular earnings that provides any certainty over meeting bills or planning for the future;*
- *The need to respond to calls to attend work, frequently at short notice, disrupts life outside of work and places a particular strain on families and arranging care for dependants;*
- *A multitude of employment rights that are usually clearly defined for permanent staff become variable and dependent on the irregular hours of work;*
- *While weekly income can frequently be inadequate, the need to be available for work when required by the employer hinders the ability of staff to take up other employment;*
- *The variability of earnings throws into doubt an individual's eligibility to claim various state benefits. For example, the working tax credit for a single parent can only be claimed if that person works 16 hours a week, but whether someone exceeds these hours can vary from week to week under zero hours,*

⁶⁰ <https://www.unison.org.uk/content/uploads/2014/05/TowebZero-Hours-Factsheet2.pdf>

⁶¹ <https://www.unison.org.uk/content/uploads/2014/05/TowebZero-Hours-Factsheet2.pdf>

creating even greater uncertainty over income. In addition, lack of income makes it extremely difficult to obtain a mortgage or other form of loan.

- *Zero hours contracts have also shown themselves to be more open to abuse than regular permanent contracts. For example, scheduling of working hours in the homecare sector that allowed no time for travel time between home visits has led to staff working considerably beyond their paid hours in some cases. Unison note that the government has acknowledged that such practices have been deliberately used by companies in homecare to avoid paying the national minimum wage.*
- *Uncertainty about hours offered each week can lead to fear among staff about complaining or raising issues concerning any aspect of the job or service.*
- *Fewer hours and lower pay rates mean that average weekly earnings for zero hours workers stands at £188, compared to £478 for permanent workers.*

These central points raised by Unison are considered below in the context of Section 75 of the *Northern Ireland Act 1998*.⁶² In particular, below focuses on the impact on female workers who are from Black and Minority Ethnic (BAME) backgrounds and younger workers, in line with Section 75 protected categories.

5.1.2 ZHCs and Gender

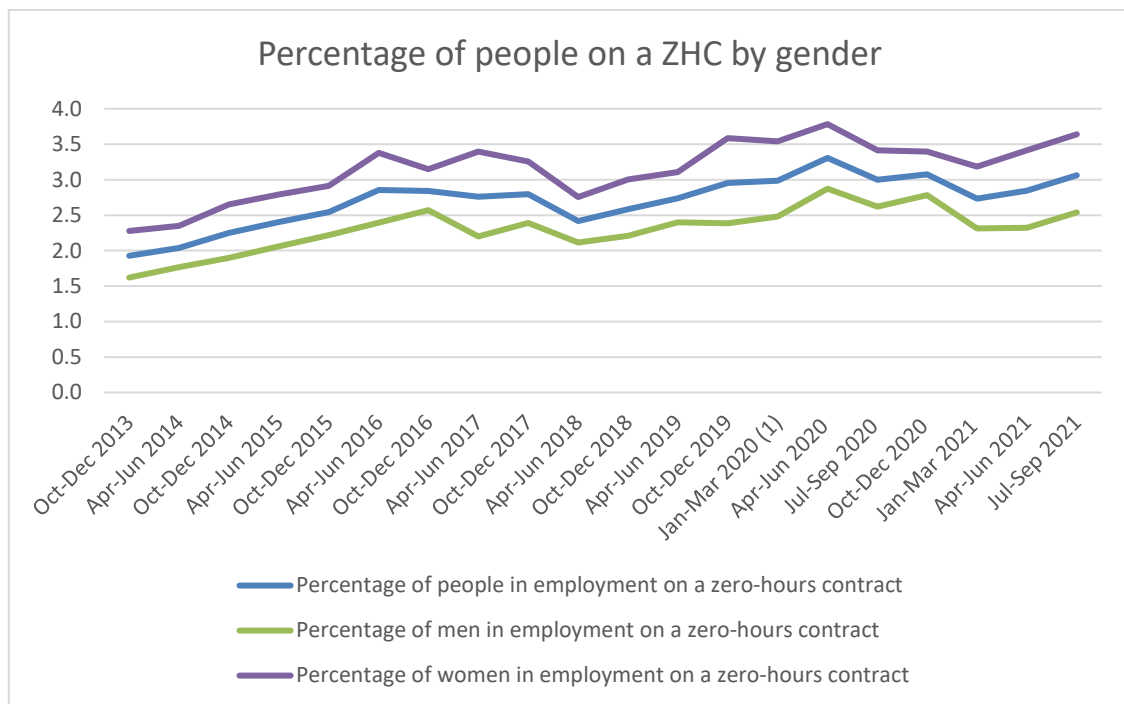
In relation to obligations under Section 75 of the Northern Ireland Act 1998, there are a number of areas for consideration. The first of these is gender. According to Northern Ireland Council for Voluntary Action (NICVA), women are around two-thirds more likely than men to be a ZHW.⁶³ When breaking down the percentage of people on ZHCs in the UK since 2013, it can be seen that women have consistently been above the collective average, as well as those held by men⁶⁴ - see Figure 2 below. Furthermore, what is important to note is the growing percentage of those on ZHCs, in particular for women.

⁶² <https://www.legislation.gov.uk/ukpga/1998/47/section/75>

⁶³ <https://www.nicva.org/article/future-zero-hours-contracts-northern-ireland>

⁶⁴ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>

Figure 2: Breakdown UK individuals on ZHCs by gender⁶⁵



Source: ONS 2021

Moreover, there are a number of additional impacts for women. As noted by the Trade Union Council (TUC), employers argue that ZHCs are beneficial for workers with caring responsibilities, but the lack of a work guarantee and related unpredictability of work from week to week (and day to day) can put a strain on families, making it very difficult to arrange childcare or elder care.⁶⁶ Due to ZHCs' uncertain employment status and the intermittent nature of their employment, many parents also lose out on family friendly rights, including the right to request to work flexibility and the return to their substantive job after maternity or paternity leave.

This point was emphasised by the Equality Commission for NI.⁶⁷ In its formal investigation into the treatment of pregnant workers and mothers in NI workplaces, respondents working on non-permanent contracts were more vulnerable to job loss during pregnancy, maternity leave or on return to work. They found that one in five respondents [20.9% out of 91 respondents] who were employed fixed term, temporarily, ZHCs or other casual contracts lost their job.⁶⁸

Respondents also noted they were vulnerable to having their working hours changed against their wishes, or even reduced during pregnancy. This detriment to their salary

⁶⁵ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts/current> Table 3

⁶⁶ <https://www.tuc.org.uk/sites/default/files/TUC%20final%20response%20to%20BIS%20consultation%20on%20zero-hours%20contracts.pdf>

⁶⁷ https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Expecting_Equality-PregnancyInvestigation-FullReport.pdf?ext=.pdf

⁶⁸ Equality Commission for NI Report (n 7) Page 54

directly affected their entitlement to Statutory Maternity Pay. Of the respondents who had their working hours changed those with less than 1 years' service and those who were employed on ZHCs or other casual contracts were more likely to report this treatment.⁶⁹

Gender and Race

A recent joint report from the TUC and the equality organisation Race on the Agenda (RotA) highlights that those from black and minority ethnic (BAME) backgrounds are almost twice as likely to be on ZHCs as white men and almost one and a half times more likely than white women, according to 2021 research.⁷⁰ The report warned that far from providing greater flexibility, ZHCs were trapping women from BAME backgrounds into low pay and insecure work. That resulted in those workers struggling to manage their household finances, as well as plan their lives.⁷¹

According to this research, it was noted that approximately one in six ZHCs workers in the UK are BAME; though BAME workers make up only one in nine workers overall. The report revealed significant disparities along the lines of gender and race. For instance, 2.5% of white men were on zero-hours contracts on the last three months of 2020, compared with 4.1% of BAME men. Similarly, highest proportions were found among BAME women, at 4.5%, compared with 3.2% of white women.⁷²

The joint report described ZHCs as “*the most egregious example of one-sided flexibility at work*”, handing the employer total control over their workers' hours.⁷³ It included polling data that showed 40% of BAME workers on insecure contracts said they faced the threat of losing their shifts if they turned down work, compared with 25% of insecure white workers. The report concluded that the findings “*puncture the myth that zero-hours workers like the arrangement*”.⁷⁴

5.1.3 Zero Hours Contracts and Age

In relation to age, younger workers are also disproportionately impacted by the negative outcomes of ZHCs. Recent research states that ZHCs have a disproportionate impact on younger workers from poorer socio-economic backgrounds as this group is twice as likely to be on zero-hour contracts.⁷⁵ In fact, around 6% of

⁶⁹ Equality Commission for NI Report (n 7) Page 62

⁷⁰ <https://www.tuc.org.uk/sites/default/files/2021-06/RotAreport.pdf>

⁷¹ TUC and Rota Report (n 10) Page 7

⁷² TUC and Rota Report (n 10) Page 3

⁷³ TUC and Rota Report (n 10) Page 3

⁷⁴ TUC and Rota Report (n 10) Page 2; also see <https://www.theguardian.com/uk-news/2021/jun/13/zero-hours-contracts-trapping-women-of-colour-on-low-pay>

⁷⁵ <https://nibmehub.com/opac-service/pdf/read/Human%20Resource%20Management%20A%20Critical%20Approach%20by%20David%20G.%20Collins.pdf#page=136>

under-25s are ZHWs (compared to around 1.7% of those aged between 25 and 64), and the number of young people employed in these types of contracts is on the rise.⁷⁶

In the UK, 37% of those on ZHCs are aged between 16 and 24 years old. Those on ZHCs are also less likely to have a degree, 21%, in comparison to 31% on other contracts, with GCSE likely to be their highest qualification. The research raised concerns that dead-end jobs with no training, decent pay and limited prospects, may lead to apathy, resignation and anxiety among young people. In addition, the risk of limited financial independence for young people and their dependency on social welfare can result in further socio-economic exclusion. The research notes that the labour market experiences of young people have increasingly become protracted, unstable and fragmented.⁷⁷

5.1.4 Equality and the Bill as introduced

As explained above, there have been a number of significant concerns regarding the use of ZHCs and the potential for discrimination for a number of Section 75 groupings. In addition to those documented above, it is important to note that there have also been concerns raised about ZHC use for those with disabilities and migrant workers, which may also require further exploration.

By reducing ZHC use and providing secure employment conditions for women, those from BAME backgrounds, younger workers and others, that could eradicate a number of the detrimental impacts to their working lives, thereby meeting Section 75 requirements.

With regard to impact of ZHCs on workers and the subsequent human rights and equality obligations, the following potential issues for consideration arise:

15. What considerations has the Committee for the Economy given to the research evidencing the negative impact of ZHCs on workers given their gender, ethnicity and age?

16. What considerations has the Committee for the Economy given to the impact of ZHCs on Section 75 protected categories under the NI Act 1998?

⁷⁶ <https://commonslibrary.parliament.uk/zero-hours-contracts-rights-reviews-and-policy-responses/>

⁷⁷P 144 <https://nibmehub.com/opac-service/pdf/read/Human%20Resource%20Management%20A%20Critical%20Approach%20by%20David%20G.%20Collin%20gs.pdf#page=136>

5.2 Merits and Demerits

This sub-section explores key merits and demerits of ZHCs for employers and workers.

5.2.1 Merits

Key merits of ZHCs can be summarised under the following headings:

- Flexibility;
- Retained Experience; and,
- Cost.

Each of these are discussed in the following paragraphs.

Flexibility

As highlighted in previous sections of this Paper, one of the most commonly cited merits is the flexibility that ZHCs provide for employers and workers. For example, the UK Taylor Review (see subsection 3.1) concluded that ZHCs allowed individuals to work flexibly, enabling employers to adapt to changing market conditions.

The flexibility that ZHCs provide for workers, employees and employers may be one reason for their increase in popularity over the last decade. In 2019, the House of Commons Library noted in one of its publications that there had been a rise in young people taking up employment *via* ZHCs. It stated:⁷⁸

There was a notable rise in the number of young workers (aged 16-24) employed on ZHCs. These numbers are up by 43,000 from late 2018, meaning that 8.8% of workers in that age group were employed on ZHCs as of June this year.

The flexibility that ZHCs provide may be especially appealing to students seeking to top up student loans *via* casual work. Also, for some young people, who may not be decided on a future career path, ZHCs provide them with the chance to gain experience in various jobs before deciding on a future career.

Retained Experience

In 2013, the then UK Department for Business Innovation & Skills (BIS) conducted a consultation on ZHCs. The BIS consultation document stated:⁷⁹

⁷⁸ House of Commons Library (2019) *Zero-hours contracts: Rights, reviews and policy responses* : <https://commonslibrary.parliament.uk/parliament-and-elections/government/zero-hours-contracts-rights-reviews-and-policy-responses/>

⁷⁹ Department for Business Innovation & Skills (2013) *Consultation :Zero Hours Employment Contracts*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/267634/bis-13-1275-zero-hours-employment-contracts-FINAL.pdf

Zero hours contracts allow businesses to retain the skills and experience of staff who might wish to partially retire or who have retired. An employer may have made a significant investment in the individual, through training for example.

The 2013 BIS consultation document also argued that ZHCs enable businesses to “retain a pool of trained and skilled staff, who know the culture of the businesses and its procedures rather than agency staff who may not”.

Cost

In 2013, the Resolution Foundation suggested that there is some evidence of firms substituting agency staff for zero hours arrangements as a means of avoiding agency fees.⁸⁰ Lowering the cost of labour is perhaps always an attractive proposition for an employer. It can also be an economic reality for some employers.

In certain circumstances, ZHCs can be used to lower the wage bill for firms, and consequently keep less profitable areas of their businesses in operation. That can stabilise growth in the medium term, and eventually allow the firm to employ additional staff where increased profits warrant further expansion of the labour force.

5.2.2 Demerits

The demerits of ZHCs can be summarised under the following headings:

- Uncertainty;
- Fairness; and,
- Exclusivity.

Each are discussed in the following paragraphs.

Uncertainty

Under ZHCs there is no guaranteed level of regular work or earnings. This creates uncertainty for workers and employees over meeting bills or planning future expenditure. The need to respond to calls to attend work, frequently at short notice, can disrupt life outside of work; and place a particular strain on families and arranging care for dependants.⁸¹ Furthermore, uncertainty around future income can make obtaining loans and mortgages very difficult.

There is also some evidence to show a lack of transparency from employers to their employees and workers on the issue of ZHCs can lead to uncertainty - both in terms of

⁸⁰ Resolution Foundation (2013) *A Matter of Time: the rise of zero-hours contracts*:

https://www.resolutionfoundation.org/app/uploads/2014/08/A_Matter_of_Time_-_The_rise_of_zero-hours_contracts_final_1.pdf

⁸¹ UNISON (2016): *Zero Hours Contracts* <https://www.unison.org.uk/content/uploads/2016/02/Zero-Hours-Factsheet.pdf>

employment status and rights. For example, the 2013 BIS consultation on ZHCs, stated:

The information gathering exercise heard that individuals were not always aware they are employed on a zero hours contract, or that there was a possibility they could be offered no work or ‘zero hours’. In some cases employers did not make this clear when advertising or interviewing people for jobs, or in the employment contract itself. Furthermore, some employers may not fulfil, or understand, their responsibilities towards individuals they employ on a zero hours contract in terms of their employment rights.

In 2016, the UK Parliament’s BIS Committee report, *Employment practices at Sports Direct*, highlighted the difficulties for workers on ZHCs in this regard. It stated:⁸²

We received damning testimonies from Sports Direct workers, past and present, about the misuse of the contracts and inadequate working conditions, including the following, “... Staff on zero-hour contracts were being forced to work a further three hours without pay (and if they refused, they would not be offered any hours the following day)”.

Furthermore, a 2016 TUC poll of workers on ZHCs found that:⁸³

- More than half (51%) have had shifts cancelled at less than 24 hours’ notice.
- Nearly three-quarters (73%) have been offered work at less than 24 hours’ notice.
- More than a third (35%) have been threatened with not being given shifts in the future, if they turn down work.
- Only a quarter (25%) prefer being on ZHCs.

Fairness

Workers on ZHCs often do not receive the same employment rights and entitlements as their counterparts on regular or more traditional employment contracts. The 2016 TUC poll⁸⁴ found that a substantial majority (82%) of workers on ZHCs said that they do not receive sick pay. Additionally, 63% did not receive maternity or paternity pay. Seven in ten would not receive redundancy pay if made redundant. Just under half (46%) said they do not get holiday pay; and just over half (54%) said they have not been given a written statement of terms and conditions.

⁸² House of Commons Business, Innovation and Skills Committee (2016) *Employment practices at Sports Direct*: <https://publications.parliament.uk/pa/cm201617/cmselect/cmbis/219/219.pdf>

⁸³ TUC (2018) *Great Jobs with Guaranteed Hours*: https://www.tuc.org.uk/sites/default/files/great-jobs-with-guaranteed-hours_0.pdf

⁸⁴ Ibid.

Exclusivity

As discussed earlier in this Paper, some individuals on ZHCs are prevented from working for another employer even when their primary employer has no work for them. In 2013, the then BIS highlighted concerns over exclusivity, stating:

In certain cases [exclusivity] can mean that people were stopped from looking for work elsewhere particularly when they needed more hours to bump up their earnings. Feedback from employers themselves suggests awareness that there can be abuses that limit flexibility.

5.3 Anticipated Implementation Costs

This sub-section discusses areas in which key potential financial implications could arise for the “public purse” when implementing the ZHW Bill, if enacted as introduced. It does not address those costs for businesses in the private sector.

5.3.1 Financial Implications: The Labour Relations Agency

Clauses 7 and 16 of the ZHW Bill, as introduced, make provision for the LRA to monitor the compliance of employers, and to play a key role in the resolution of any disputes with regard to ZHCs and banded hours contracts.

Background on LRA

The LRA is a non-departmental public body established under the *Industrial Relations (Northern Ireland) Order 1976*⁸⁵ and the *Industrial Relations Order (Northern Ireland) 1992 (the 1992 Order)*.⁸⁶ It is independent of government, but accountable to and funded by the DfE. The LRA’s baseline budget is approximately £4 million (m) per year.⁸⁷ Its key duties of the LRA, as specified in the 1992 Order, are as follows:⁸⁸

- To take steps to avoid trades disputes (Art 84);
- To provide facilities for collective arbitration (Art 84 (2) (e));
- To review arrangements for collective bargaining (Art 86);
- To review industrial relations training (Art 87);
- To conduct research into matters relating to industrial relations (Art 88);
- To give and publish general advice on industrial relations matters (Art 89);
- To publish Codes of Practice (Art 90); and,
- To provide individual conciliation and individual arbitration under all relevant statutes (Art 84 & 96).

⁸⁵ Industrial Relations (Northern Ireland) Order 1976: <https://www.legislation.gov.uk/nisi/1976/1043/contents/made>

⁸⁶ Industrial Relations (Northern Ireland) Order 1992: <https://www.legislation.gov.uk/nisi/1992/807/schedule/4>

⁸⁷ Email correspondence from DfE to RalSe received 29 June 2021.

⁸⁸ Industrial Relations (Northern Ireland) Order 1992: <https://www.legislation.gov.uk/nisi/1992/807/schedule/4>

The DfE describes the LRA's key functions as follows:

The Agency provides an impartial and confidential employment relations service to those engaged in industry, commerce, the voluntary sector and public services. Its main users are workers, employees, employers, employers' associations, trade unions and other organisations and individuals requiring the Agency's assistance. The Agency is active in resolving disputes through its conciliation, mediation and arbitration services. The Agency's services also include the provision of advice on good employment practices and assistance with the development and implementation of employment policies and procedures.

Financial Implications: LRA

In order to assess any potential financial implications arising from the Bill, if enacted as introduced, RaISe requested the following information from the DfE with regard to the LRA:

- What associated costs (including: budget, salary, expenses, office costs including other staff) could the department foresee following such a change in the legislation? and,
- Does the Department currently have any costs relating to the collection of data on employers and the hours worked by their staff, in this regard?

In turn, RaISe received the following answer:⁸⁹

Any change to the remit or functions of the LRA would need to be carefully costed and an impact assessment should be carried out. The Department has not carried out any such assessment and does not hold this information.

Consequently, it is not possible **at this time** to estimate any financial implications arising from the ZHW Bill for the LRA, if the Bill is enacted as introduced. However, RaISe contacted the LRA directly and discussed potential cost implications. The LRA response is summarised below. It should be noted that the LRA did not undertake any costings or impact assessments with regard to the information received by RaISe; as such, the information that the LRA supplied is used in this Paper for **illustrative purposes** only.

Summary of the LRA Response

The LRA indicated to RaISe that it is impossible to determine how many ZHCs there are in NI. Additionally, it does not have access to a database of all employers in NI. It only has specific statistical data held for key purposes. With regard to assessing what resources any new enforcement directorate would need, the LRA indicated that a staff

⁸⁹ Email correspondence from DfE to RaISe received 29 June 2021. Page 1.

complement of 1 Deputy Principal, 3 Staff Officers and an administration team may be needed to perform the provisions of the Bill, if enacted as introduced.⁹⁰

Table 3 below shows the salary costs for a new enforcement unit consisting of 1 Deputy Principal, 3 Staff Officers and a small administration team of 2 Executive Officer II:

Table 3: Potential Staff Complement and Salary Costs⁹¹

Grade	Number	FTE salary	Employer contributions (NIC etc.)	Total
Deputy Principal	1	£40,976	£16,922	£57,898
Staff Officer	3	£98,196	£39,756	£137,952
Executive Officer II	2	£52,274	£19,590	£71,864
Total	6	£191,446	£76,268	£267,714

Source: Department the Economy 2021

Based on costings from the average salaries for 2020/21, the total cost of a new team dedicated solely to undertaking new duties arising from the provisions created under the Bill, if enacted as introduced, equates to around £267,714 per annum. As mentioned above, that is purely an illustrative example, based on assumptions made without any detailed costings or impact assessments. There also would be set up costs associated with this change, such as new computer equipment and office resources, which could need to be purchased.

The LRA currently employs around 70 staff focussed on dispute prevention and resolution: it is not a regulatory body. As such, it would be reasonable to assume that all the skills needed to perform the new duties under the Bill, if enacted as introduced, are not currently held by LRA staff. Consequently, either a new team would be needed or training would be required to upskill the existing staff to undertake these new duties. Either way there would be a financial implication for the public purse. However, any accurate estimation of this would require access to more data than are currently available to RaISe at the time of writing this Paper.

⁹⁰ Email correspondence from LRA to RaISe received 28 May 2021.

⁹¹ The table is compiled by the RaISe, relying on data supplied by DE in email correspondence dated 30 March 2021.

6 Concluding Remarks

Over the past decade, the prevalence of ZHCs in the UK labour market has remained consistently low. In 2021, only 3% of people in employment in the UK were working under a ZHC. In NI, the most recent figure is even lower at 1.2%. At first glance this seems a surprisingly low figure given the apparent flexibility ZHCs can offer. However, the lack of a guaranteed level of regular earnings and the general unpredictability of working hours may go some way to explain the low levels of ZHCs in the UK labour market.

Arguably, it is the intrinsic uncertainty and insecurity of ZHCs that underpins the provisions contained in the ZHW Bill. The ZHW Bill does not impose a ban on ZHCs, but seeks to provide the worker with more certainty and job security *via* the option of a banded-hour contract that will guarantee them a minimum and a maximum number of weekly contracted hours. It protects workers against being called in to work by their employers and when they get there, no work is available. Furthermore, provisions in the Bill, as introduced, make the unsavoury practice of exclusivity unenforceable.

However, there does appear to be a loophole in the introduced Bill in relation to exclusivity. Clause 14 of the Bill, as introduced, states that if a worker previously on a ZHC is placed on a band, they are no longer on a ZHC. This may lead to a situation whereby workers previously protected against exclusivity clauses under a ZHC is now vulnerable to the placement of an exclusivity clause on them by their employer because they are now on a banded hours contract.

Moreover, concerns have been raised, particularly with regard to the 3-month reference/qualifying period, and whether that could be misused by unscrupulous employers, who would be intent on rotating staff constantly, and thereby denying workers access to a banded hours contract. Additionally, critics have also pointed out that the system of banded hours is not “fit for purpose” in some employment sectors, such as retail, tourism and hospitality, due to the seasonal nature of this type of work.

The research undertaken for this Paper has highlighted the disproportionately negative impacts ZHCs have with regard to gender and race. Women are two-thirds more likely to be on a ZHC than men. Moreover, women working on non-permanent contracts were more vulnerable to job loss during pregnancy, maternity leave or on return to work. Additionally, women from BAME backgrounds were found to be particularly disadvantaged in this regard.